



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

December 17, 2009

Lieutenant Colonel Anthony P. Mitchell
District Engineer
Nashville District Corps of Engineers
Attn: Lisa Morris (Regulatory Division)
3701 Bell Road
Nashville, Tennessee 37214

Subject: Public Notice 09-77; Maple Ridge Development, LLC

Dear Colonel Mitchell:

This letter is in response to Public Notice Number 09-77 (PN), and follows our letter of November 12, 2009, regarding the proposed Maple Ridge subdivision. The applicant, Maple Ridge Development, LLC is requesting authorization to deposit fill material associated with stream impoundment and relocation of an unnamed tributary of Knox Creek. The project proposal describes installation of an impoundment structure to create an in-stream stormwater management basin, placement of 100 linear feet (lf) of culvert pipe for a road crossing, and relocation of 925 lf of the channel for development of some of the proposed lots. The site is approximately 10 miles west of Huntsville, Alabama.

The Environmental Protection Agency (EPA) has reviewed the information on this project contained in the PN, and this letter summarizes EPA's position on this project, concentrating specifically on the Section 404 (b)(1) Guidelines (Guidelines), and the implementing regulation, 40 CFR Part 230, which prohibit avoidable or significant adverse impacts to the aquatic environment. The purpose of the Guidelines is to restore and maintain the chemical, physical, and biological integrity of waters of the United States. These goals are achieved, in part, by prohibiting discharges of dredged or fill material that would result in avoidable or significant adverse impacts on the aquatic environment. The burden to demonstrate compliance with the Guidelines rests with the permit applicant. To date, EPA has not received any indication that the proposed project has been modified to bring it into compliance with the 404(b)(1) Guidelines, nor any mitigation plan, and we believe the proposed activities would have substantial and unacceptable impacts on Aquatic Resources of National Importance (ARNI). Our concerns remain the same as those described in our "A" letter of November 12, 2009, which is incorporated here by reference.

Given that neither development of subdivision lots, nor detention of stormwater is a water-dependent activity, a practicable alternative that does not involve impacts to special aquatic sites is presumed to exist. An alternatives analysis must be presented that documents alternatives considered and selection of the least environmentally damaging practicable

alternative. The alternatives should include appropriate site design options that avoid impacts such as those presented by development of lots 53 through 64.

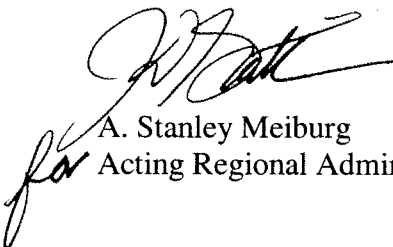
Concerns remain that the proposed activity could contribute sedimentation via Knox Creek to Limestone Creek, which has had an approved Total Daily Maximum Load for siltation since 2003, as well as other pollutants that may degrade water quality. It is recommended that channel relocation be avoided, development of lots 53 through 64 be avoided, and that any stormwater detention features be established off-stream. In addition, EPA has not received any information indicating that the applicant has conducted surveys for endangered and threatened species, as recommended in a Department of Interior letter of October 22, 2009.

According to the Guidelines and *Compensatory Mitigation for Losses of Aquatic Resources* (40 CFR Section 230 Subpart J), proposed impacts must be avoided to the extent practicable; remaining unavoidable impacts must then be minimized, and finally compensated for to the extent appropriate and practicable. Once avoidance has been demonstrated, any remaining impacts must be minimized. Until the former two steps have been completed, it is premature to consider compensatory mitigation, but once sufficient information is available to determine that the project complies with the Guidelines, we welcome the opportunity to discuss appropriate compensatory mitigation for this project.

Based on the above observations, EPA has determined that the project, as currently proposed, does not comply with the Section 404(b)(1) Guidelines and will have substantial and unacceptable adverse impacts on an ARNI. Therefore, we recommend denial of the project, as currently proposed. This letter follows the field-level procedures outlined in the August 1992 Memorandum of Agreement between the EPA and the Department of the Army, Part IV, paragraph 3(b) regarding Section 404(q) of the Clean Water Act.

Thank you for the opportunity to comment on this PN. If you have any questions regarding these comments, please contact Rosemary Hall (Hall.Rosemary@epa.gov or 404-562-9846) or Jennifer Derby (Derby.Jennifer@epa.gov or 404-562-9401).

Sincerely,



A. Stanley Meiburg
Acting Regional Administrator

cc: Samantha Strickland, TVA, Muscle Shoals, AL
Brandy Bowen, ADEM, Montgomery, AL
Josh Rowell, FWS, Daphne, AL
Matthew Marshall, ADCNR, Montgomery, AL